

MEMORANDUM OF UNDERSTANDING (the "MoU")

(to be executed on the Rs.10,000 or equivalent stamp paper)

This MoU is entered into on this the day of, 20.....

AMONGST

1. {.....Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at(hereinafter referred to as the "OEM/Technology Supplier/ Party of the First Part" which expression shall, unless repugnant to the context include its successors and permitted assigns) **of the First Part;**

AND

2. {.....Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at(hereinafter referred to as the "Party of the Second Part" which expression shall, unless repugnant to the context include its successors and permitted assigns) **of the Second Part.**

The above-mentioned parties of the First Part and Second Part are collectively referred to as the "Parties" and each is individually referred to as a "Party".

WHEREAS

- A. BSWML established under ____ Act __ represented by its ____ having its principal office ____ (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the "Bid") by its Request for Proposal No. dated (the RFP") (the "Project") through Public Private Partnership.
- B. The Party of the Second Part is interested in bidding for the Project meeting technical qualification of the RFP based on the technology and experience of the Party of the First Part as OEM/Technology Supplier and in accordance with the terms and conditions of the RFP document under sub-Article ____ and other bid documents in respect of the Project, and
- C. It is a condition under the RFP document that the Bidder (being the Party of the First Part solely, or a consortium in which the Party of the First Part is a constituent), or any one member of the consortium in which the Bidder is a constituent member, shall enter into a Memorandum of Understanding with the party meeting the criteria for technical qualification as specified in the RFP and furnish a copy thereof along with the Bid.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning as specified thereto under the RFP.


दम्मु बालय्या / DAMMU BALAIAH
 अपर महामन्त्र (वास्तुकला) एवं (संस्थापनीयता प्रभारी)
 Addl. General Manager (Architect & Sustainability Incharge)
 गिड्स लिमिटेड, बंगलुरु
BITES LIMITED, BENGALURU


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2. Memorandum of Understanding

2.1 The Parties do hereby irrevocably bind themselves for the purposes of participating in the Bidding Process for the Project together as agreed herein.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this MoU and not individually, either directly or indirectly or through any of their Associates.

3. Covenants

The Party of the Second Part hereby undertakes that in the event the Bidder is declared the Successful Bidder and awarded the Project, it shall incorporate the Special Purpose Vehicle (the SPV) under the Indian Companies Act, 1956/2013 registered at Bengaluru and shall enter into a Concession Agreement with the Authority for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) Party of the First Part shall be responsible for design, engineer, supply, fabricate, construct, commission and perform O&M for at least 3 (three) years after achieving COD including all such duty as incidental thereto in accordance with a separate contract to be entered into between the Parties for the purpose.
- b) Party of the Second Part shall meet the financial qualification and be responsible for financing; obtaining consent & clearance; carrying out civil works pertaining to the site as per the instruction of OEM/Technology supplier; coordination with Authority and all such duty as incidental thereto and generally responsible towards the Authority for all matters connected with the execution of the Project in accordance with the terms of the RFP.

5. The Party of the First Part not as a Bidder

Notwithstanding anything to the contrary provided in the RFP or the Concession Agreement, the Party of the First Part shall not be a party in the consortium comprising the Bidder, and shall not undertake any joint and several liability in any manner whatsoever towards the Authority, the Party of the Second Part or the Bidder in connection with the RFP or the Concession Agreement. The obligations and liabilities of the Party of the First Part towards the Bidder or the Party of the Second Part shall be governed by agreements to be entered between them separately in connection with the Project subject to mutual agreement.

6. Shareholding in the SPV

- 6.1 The Parties undertake that the Party of the Second Part, either on its own or together with its consortium members excluding the Party of the First Part, shall hold 100% (hundred percent) equity in the SPV at the time of signing of the Concession Agreement.
- 6.2 The Party in the Second Part warrants that it shall comply with all equity lock-in requirements and minimum shareholding set forth in the Draft Concession Agreement.
- 6.3 The Party of the First Part shall not be part of any consortium or SPV in connection with the Project. The Party of the First Part shall not be bound by obligation of infusing/maintaining equity into the SPV.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this MoU that:


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अपर महाप्रबंधक (वास्तुकला) एवं (संस्थापनीयता प्रभारी)
Addl. General Manager (Architect & Sustainability Incharge)
राइट्स लिमिटेड, बेंगलुरु
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- a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this MoU;
- b) The execution, delivery and performance by such Party of this MoU has been authorized by all necessary and appropriate corporate or Governmental action and a copy of the extract of the charter documents and Board Resolution/ Power of Attorney in favour of the person executing this MoU for the delegation of power and authority to execute this MoU is annexed to this MoU, and shall not, to the best of its knowledge:
- require any consent or approval not already obtained;
 - violate any Applicable Law presently in effect and having applicability to it;
 - violate the memorandum and articles of association, by- laws or other applicable organizational documents thereof;
 - violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this MoU; and
- c) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects, or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this MoU.

8. Termination

This MoU shall be effective from the date hereof and shall continue in full force and effect until the third anniversary of the CoD of the Project is achieved and in accordance with the Concession Agreement, in case the Project is awarded to the Party of the Second Part or any consortium comprising of the Party of the Second Part. However, in case the Party of the Second Part or any consortium of the Party comprising of the Second Part fails to meet the qualification criteria for the Project, or does not get selected for award of the Project, or the Project is abandoned/awarded by the Authority to any other party in which the Party of the Second Part is not a constituent, or any of the Parties hereto have become insolvent or enter into receivership, then this MoU shall stand terminated, as the case may be.

9. Miscellaneous

- This MoU shall be governed by laws of India.
- The Parties acknowledge and accept that this MOU shall not be amended by the Parties without the prior written consent of the Authority.


दम्मु बालय्या / DAMMU BALAIAH
अपर महाप्रबंधक (वास्तुकला) एवं (संस्थापनीयता प्रभारी)
Addl. General Manager (Architect & Sustainability Incharge)

राइट्स लिमिटेड, बंगलुरु
RITES LIMITED, BENGALURU


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IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS MEMORENDUM OF UNDERSTANDING AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
behalf of
FIRST PART by:

SIGNED, SEALED AND DELIVERED For and on
For and on behalf of
SECOND PART by:

(Signature)

(Signature) (Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.


दम्मु बालय्या / DAMMU BALAIAH
अपर महाप्रबंधक (वास्तुकला) एवं (संधारणीयता प्रभारी)
Addl. General Manager (Architect & Sustainability Incharge)
राइट्स लिमिटेड, बेंगलुरु
RITES LIMITED, BENGALURU




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Notes:

1. The mode of the execution of the MoU should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each MoU should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favor of the person executing this MoU for the delegation of power and authority to execute this MoU.
3. For a MoU executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

दम्मु बालय्या / DAMMU BALAIAH
अपर महाप्रबंधक (वास्तुकला) एवं (संधारणीयता प्रभारी)
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Chief Engineer &
Chief General Manager
BSWML